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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/974,768	10/09/2001	Kenneth C. Cundy	033053-040	6895

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EXAMINER

BADIO, BARBARA P

ART UNIT

PAPER NUMBER

1616

DATE MAILED: 09/05/2003

#15

Please find below and/or attached an Office communication concerning this application or proceeding.



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EXAMINER

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15

DATE MAILED:

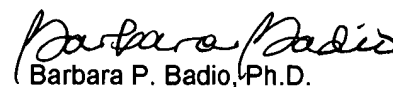
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Commissioner for Patents

The reply filed on August 21, 2003 is not fully responsive to the prior Office Action because: It did not include an election of a single **disclosed species** as required. Since the period for reply set forth in the prior Office action has expired, this application will become abandoned unless applicant corrects the deficiency and obtains an extension of time under 37 CFR 1.136(a).

The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. In no case may an applicant reply outside the SIX (6) MONTH statutory period or obtain an extension for more than FIVE (5) MONTHS beyond the date for reply set forth in an Office action. A fully responsive reply must be timely filed to avoid abandonment of this application.

Note: Applicant's argument that it is not required that the elected species be illustrated is noted but not persuasive. MPEP 809.02(a), section (B) deals with action the examiner should take in identification of disclosed species to which claims are restricted. That section does not imply that applicant may define an elected species by defining "other distinguishing characteristics of the species" as suggested by applicant. However, MPEP 809.02(a), section (C) clearly states "[a]pplicant should then be required to elect a **single disclosed species** under 35 USC 121, and advised as to the requisites of a complete reply and his or her rights under 37 CFR 1.141.


Barbara P. Badio, Ph.D.
Primary Examiner
Art Unit: 1616